

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Operation of the Missouri River
System Litigation

03-MD-1555 (PAM)

MEMORANDUM AND ORDER

This matter is before the Court on remand from the Eighth Circuit Court of Appeals, which found the following claims to be moot: (1) the claim of Nebraska Public Power District (“NPPD”) that the United States Fish and Wildlife Service (“FWS”) failed to consider the economic feasibility of the summer low-flow requirement in developing the 2003 Amended Biological Opinion (“BiOp”); (2) the State of Missouri’s claim that the loss of shallow water habitat for larval and juvenile pallid sturgeon in central Missouri resulting from summer low flow constitutes an impermissible “take” of the sturgeon under the Endangered Species Act (“ESA”) § 9; and (3) Blaske Marine’s National Environmental Policy Act (“NEPA”) claim that a supplemental Environmental Impact Statement (“EIS”) is required for the 2003 Amended BiOp summer low-flow requirement. Based on the directive of the Eighth Circuit, these claims are dismissed without prejudice.

Accordingly, based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. NPPD’s claim that the FWS failed to consider the economic feasibility of the summer low-flow requirement in developing the 2003 Amended BiOp is **DISMISSED WITHOUT PREJUDICE**;

2. Missouri's claim that the loss of shallow water habitat for larval and juvenile pallid sturgeon in central Missouri resulting from summer low flow constitutes an impermissible "take" of the sturgeon under ESA § 9 is **DISMISSED WITHOUT PREJUDICE**; and
3. Blaske Marine's NEPA claim that a supplemental EIS is required for the 2003 Amended BiOp summer low-flow requirement is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 22, 2005

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge